

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1955 of 1982

Date of decision: 12-08-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BAI SOMALI, WD/O JOKHNABHAI DHOLABHAI  
Versus

BAI SAJJI, D/O LALABHAI PUNABHAI  
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MR JC SHETH for Petitioner  
SERVED for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12-8-1996

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

Agricultural land comprising of survey No.99  
admeasuring about 1 acre 12 gunthas situate at village  
Padaliaya was admittedly originally held by Thakore

Amarsingh Jawansingh as the Inamdar. On the abolition of jagir name of one Shri Lalabhai Punabhai was entered in the record as occupant in cultivation of the land in addition to the entry made for the said Jagirdar. On death of Lalabhai Punabhai name of his widow Bai Dhuli was entered in the revenue record in his placed. Bai Dhuli, widow of Lalabhai Punabhai sold the land in question to one Jokhnabhai Dhulabhai belonging to Scheduled Tribe. Entry in the revenue record of the purchaser has been made in respect of this land on 3-6-1969. Jokhnabhai has expired after purchase of the land and the petitioner being successor to him had come in possession of the land in question.

2. Transaction of the sale made in favour of the predecessor of the petitioner was challenged by Bai Dhuli by filing application before the Prant Officer concerned. The Prant Officer by his order dated 15-1-1980 held the same to be in contravention of the provisions of section 73A of the Bombay Land Revenue Code and consequently order of regrant of the land in favour of Bai Dhuli has been made on condition of making payment of penalty of Re.1. The petitioner felt aggrieved by the order of the Prant Officer, and preferred appeal No.50 of 1980 before the Collector, Panchmahals at Godhra. The appeal has been dismissed by the appellate authority on 20th November, 1980 and the order of the Prant Officer has been affirmed. The petitioner thereafter took up the matter in revision being S.R.D.L.N.B.B. 113 of 1981 before the Special Secretary, Revenue Department, Government of Gujarat, but there also he lost.

3. Learned counsel for the petitioner raised the only contention that the provisions of section 73A of the Bombay Land Revenue Code were not applicable to the sale made in the present case as it was a sale in between two persons belonging to Scheduled Tribe. Relying on the provisions of section 73AA as inserted after the amendment of the Act by notification dated 26th December, 1980 the counsel for the petitioner contended that under this provision permission is required even in a case where the sale of agricultural land has been made by one Scheduled Tribe to another Scheduled Tribe. This provision, counsel for the petitioner contended, was not given retrospective effect and as such the sale deed made earlier to insertion of this provision in the Act will not render the sale deed made earlier ineffective and inoperative.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the

petitioner. Before considering the submissions made by the learned counsel for the petitioner I consider it appropriate to refer to the relevant part of the provisions which read a...R

73A. (1) Notwithstanding anything in the foregoing section, in any tract or village to which the State Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) The State Government may, by notification in the Official Gazette, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

73AA. (1) Notwithstanding anything contained in section 73, an occupancy of a person belonging to any of the Schedule .R

section and in section 73AB referred to as "(the tribal)" shall not be transferred to any person without the previous sanction of the Collector.

(2) The previous sanction of the Collector under sub-section (1) may be given in such circumstances and subject to such conditions as may be prescribed.

5. All the three authorities below have decided in favour of the respondent. The sale made has been held to be in contravention of Section 73A of the Act 1957. The distinction which is sought to be drawn by the petitioner by giving reference to the provisions of Section 73AA of the Act 1957 does not come out to be correct. The provisions of Section 73A of the Act 1957 works in the different field whereas the provisions of Section 73AA has its own other field. Section 73A of the Act 1957 is applicable only for any tribe or village to which the State Government by notification published before the introduction therein of an original settlement declared the provisions of the Section applicable and not otherwise. It is not a case here of the petitioner that these provisions are not applicable. The contention that the provisions of Section 72AA are not retrospective is of no consequences. The Act 1957 is a

special legislation governing occupants, tenants, owners, their relationship and dispute. The legislature has in its wisdom not provided second appeal or revision to this Court. The object is to give finality to the decision given by the appellate authority under the Act 1957. In such cases, this Court may not be justified in extending its jurisdiction under Article 227 of the Constitution of India and further cannot assume unlimited prerogative to correct all species of wrong decisions. Jurisdiction of this Court under Article 227 of the Constitution of India is restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice will be done unless the High Court interferes, which is not a case here.

6. In view of these facts, I do not find it to be appropriate case where this Court should exercise its jurisdiction under Article 227 of the Constitution of India. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. Ad-interim relief granted by this Court stands vacated.

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